



AUDIT & GOVERNANCE COMMITTEE

Monday, 13 March 2023

Subject	Covert Investigation Policy
Report by	Councillor Maurice Cook, Cabinet Member with responsibility for Resources Councillor Edward Back, Assistant Cabinet Member for Resources
Supporting Officer	Siobhan Martin Head of Internal Audit siobhan.martin@eastsoffolk.gov.uk 07785 355337

Is the report Open or Exempt?	OPEN
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Category of Exempt Information and reason why it is NOT in the public interest to disclose the exempt information.	Not applicable
Wards Affected:	None

Purpose and high-level overview

Purpose of Report:

The Council has used the Regulation of Investigatory Powers Act 2000 (RIPA) for many years as a tool to combat fraud and corruption. Additional powers were granted to Local Authorities in 2016 with the introduction of the Investigatory Powers Act 2016. These Acts enable covert surveillance by public bodies under strict conditions.

The Council's current Policy was last reviewed in June 2021. It is expected practice to review the Policy regularly, and the Policy and associated procedures have been refreshed to ensure clarity for all parties.

Options:

There are no options to be considered in relation to this report.

Recommendation:

That the Audit and Governance Committee approve the refreshed Covert Investigation Policy.

Corporate Impact Assessment

Governance:

Non-adherence to this Policy may facilitate serious corporate governance weaknesses. It is a mandatory requirement that the Council adheres to legislation.

ESC policies and strategies that directly apply to the proposal:

ESC Covert Investigation Policy

ESC Anti-Money Laundering Policy

ESC Whistleblowing Policy

Environmental:

There are no known direct or indirect environmental impacts arising from this report.

Equalities and Diversity:

Equality and Diversity implications arising from this report and its associated Policy and procedures would be enacted in accordance with the Human Rights Act 1998 and Equality Act 2010.

Financial:

Non-adherence to this Policy may facilitate serious financial weaknesses.

Human Resources:

There are no human resources impacts arising from this report, except that experienced and qualified staff are required to mitigate the risks associated with non-adherence to the relevant legislation associated with the use of investigatory powers.

ICT:

There are no ICT impacts arising from this report.

Legal:

It is a mandatory requirement that the Council adheres to the Regulation of Investigatory Powers Act 2000, the Investigatory Powers Act 2016, the Data Protection Act 2018, and associated Codes of Practice. Failure to comply with legislation could lead to reputational damage and the removal of investigatory tools by the Investigatory Powers Commissioners Office (IPCO). Prosecution cases may fail if the law has not been applied correctly and the Human Rights Act must be applied.

Risk:

Mitigations to the risks outlined in the Legal section above, and others not listed, involve having experienced and qualified staff in this field with regular returns and inspections to the governing body, ie the IPCO, along with appropriate training for all relevant officers.

External Consultees:

An external professional training company delivered specific training to all relevant Officers described in the Policy in late 2022 and early 2023.

Strategic Plan Priorities

Select the priorities of the Strategic Plan which are supported by this proposal: <i>(Select only one primary and as many secondary as appropriate)</i>		Primary priority	Secondary priorities
T01	Growing our Economy		
P01	Build the right environment for East Suffolk	<input type="checkbox"/>	<input type="checkbox"/>
P02	Attract and stimulate inward investment	<input type="checkbox"/>	<input type="checkbox"/>
P03	Maximise and grow the unique selling points of East Suffolk	<input type="checkbox"/>	<input type="checkbox"/>
P04	Business partnerships	<input type="checkbox"/>	<input type="checkbox"/>
P05	Support and deliver infrastructure	<input type="checkbox"/>	<input type="checkbox"/>
T02	Enabling our Communities		
P06	Community Partnerships	<input type="checkbox"/>	<input type="checkbox"/>
P07	Taking positive action on what matters most	<input type="checkbox"/>	<input type="checkbox"/>
P08	Maximising health, well-being and safety in our District	<input type="checkbox"/>	<input type="checkbox"/>
P09	Community Pride	<input type="checkbox"/>	<input type="checkbox"/>
T03	Maintaining Financial Sustainability		
P10	Organisational design and streamlining services	<input type="checkbox"/>	<input type="checkbox"/>
P11	Making best use of and investing in our assets	<input type="checkbox"/>	<input type="checkbox"/>
P12	Being commercially astute	<input type="checkbox"/>	<input type="checkbox"/>
P13	Optimising our financial investments and grant opportunities	<input type="checkbox"/>	<input type="checkbox"/>
P14	Review service delivery with partners	<input type="checkbox"/>	<input type="checkbox"/>
T04	Delivering Digital Transformation		
P15	Digital by default	<input type="checkbox"/>	<input type="checkbox"/>
P16	Lean and efficient streamlined services	<input type="checkbox"/>	<input type="checkbox"/>
P17	Effective use of data	<input type="checkbox"/>	<input type="checkbox"/>
P18	Skills and training	<input type="checkbox"/>	<input type="checkbox"/>

P19	District-wide digital infrastructure	<input type="checkbox"/>	<input type="checkbox"/>
T05	Caring for our Environment		
P20	Lead by example	<input type="checkbox"/>	<input type="checkbox"/>
P21	Minimise waste, reuse materials, increase recycling	<input type="checkbox"/>	<input type="checkbox"/>
P22	Renewable energy	<input type="checkbox"/>	<input type="checkbox"/>
P23	Protection, education and influence	<input type="checkbox"/>	<input type="checkbox"/>
XXX	Governance		
XXX	How ESC governs itself as an authority	<input checked="" type="checkbox"/>	<input type="checkbox"/>
How does this proposal support the priorities selected?			
Non-adherence to the Covert Investigation Policy may facilitate serious corporate governance weaknesses. The Policy is a valuable tool in combating fraud and corruption.			

Background and Justification for Recommendation

1 Background facts	
1.1	The Council can use covert surveillance tools to combat fraud and corruption. The legislation linked with such powers includes The Regulation of Investigatory Powers Act 2000 (RIPA) and Investigatory Powers Act 2016, along with Codes of Practice.
1.2	The Investigatory Powers Commissioner's Office (IPCO) provides independent oversight and authorisation of the use of investigatory powers by intelligence agencies, police forces and other public authorities. The IPCO's purpose is to oversee how these powers are used, taking account of the public interest, and ensuring that investigations are conducted in accordance with the law.

2 Current position	
2.1	The last IPCO inspection at East Suffolk Council occurred in 2020 and the Council was found to be compliant with the law but acknowledged its existing Policy should be refreshed more frequently as is good practice, and that up-to-date training should be provided to all relevant officers listed in the Policy and Procedures.
2.2	In accordance with the Policy the RIPA Monitoring Officer (RMO) can confirm that they received zero Regulation of Investigatory Powers Act applications/requests for the period 28 June 2021 to current date. These zero returns have been provided to the IPCO which is a formal annual requirement.
2.3	In accordance with the Policy the RMO can confirm that they received zero Covert Human Intelligence Source applications/requests for the period 28 June 2021 to current date. These zero returns have been provided to the IPCO which is a formal annual requirement.
2.4	In accordance with the Policy the RMO can confirm that they received zero 'None' Regulation of Investigatory Powers Act applications/requests for the period 28 June 2021 to current date.
2.5	In accordance with the Policy the RMO can confirm that they received zero requests to apply for Communications Data for the period 28 June 2021 to current

	date. These zero returns have been provided to the IPCO which is a formal annual requirement.
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3 How to address current situation

3.1	Promotion of the updated Policy will commence in March 2023.
3.2	Appropriate training has been provided to all relevant officers in late 2022 and early 2023.

4 Reasons for recommendation

4.1	It is good practice to review the Covert Investigation Policy at least on a biennial basis.
4.2	This report is being presented to the Audit & Governance Committee in accordance with the Committee's terms of reference which stipulate, (amongst other functions), that the Committee shall 'Monitor the counter-fraud strategy, activity and resources'.

Appendices

Appendices:

Appendix A	Covert Investigation Policy – 13.03.23
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Background reference papers:

Date	Type	Available From
2000	Regulation of Investigatory Powers Act 2000	Head of Internal Audit
2016	Investigatory Powers Act 2016	Head of Internal Audit
2021	ESC Covert Surveillance Policy	Head of Internal Audit